

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

John Harvey,
Appellant,

v.

Polk County Board of Review,
Appellee.

ORDER

Docket No. 13-77-0372
Parcel No. 030/00937-010000

On April 14, 2014, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) (2013) and Iowa Administrative Code rules 701-71.21(1) et al. Appellant John Harvey was self-represented. Assistant County Attorney David Hibbard represented the Polk County Board of Review. The Appeal Board now, having examined the entire record, heard the testimony and being fully advised, finds:

Findings of Fact

John Harvey is the owner of residentially classified property located at 1102 21st Street, Des Moines, Iowa. Harvey's property is a two-story home built in 1900 with 1792 square feet of above grade finish. The property also has 457 square feet of unfinished attic area; a full, unfinished basement; enclosed and open porches; and a 260-square-foot attached garage. The site is 0.127 acres.

The January 1, 2013, assessed value was \$55,800, allocated as \$8800 in land value and \$47,000 in dwelling value. Harvey protested to the Board of Review claiming the property was inequitably assessed under Iowa Code section 441.37(1)(a)(1). The Board of Review denied the petition.

Harvey then appealed to this Board. Harvey claimed there was no calculation or reasoning supporting his increased assessment. Harvey states he requested this information but "no such data was received." He believes an unsupported assessment is arbitrary and is not permitted under Chapter

17A. He further claims that because his prior assessment was the subject of continuing litigation before the Iowa Court of Appeals and “the foundation of the assessment has not been established in finality,” it is “premature to order a citizen to pay taxes on such a tentative finding.” We note that none of the claims made on Harvey’s Notice of Appeal & Petition form appear to fall into the grounds for an assessment protest under section 441.37.

At the outset, we address Harvey’s complaint about the lack of response to his records request. At hearing Harvey expressed difficulty obtaining information he requested from the Board of Review concerning his property’s assessment. The record reflects that on May 2, 2013, Harvey requested worksheets showing calculations, documents used to arrive at the assessment increase, reports of market forces that influenced the assessment, and the names of personnel who participated in making the assessment. The record also shows the requested information was made available for Harvey to pick up. (Email from Jim Willet to Harvey, May 16, 2013). According to Willet’s certification, Harvey received the information he requested at his Board of Review hearing on May 23, 2013. (Exhibit H). Based on this, it appears the Board of Review made a good faith effort to provide the requested documents to Harvey and they were, in fact, provided to him.

Turning now to the only claim Harvey made either to the Board of Review or this Appeal Board under section 441.37: that the subject property is inequitably assessed under 441.37(1)(a)(1). Harvey asserts that values in Polk County have fallen by 4%, yet the value of his property increased by 6%. (Exhibit 1). He believes there is no explanation for the increase in value of his property based on the county-wide trend. We note the previous 2011 assessment was \$55,700, and his 2013 assessment increased by \$100 to \$55,800.

In his appeal to the Board of Review, Harvey listed two properties he asserts demonstrate his property is inequitably assessed. The first property, 2404 Forest Drive, is a three-story office building with 6295 square feet of gross building area and is commercially classified. For a property to be used as an equity comparable, it must be reasonably similar to the subject property. This property does not

have the same classification as the subject property and, therefore, is not reasonably similar. Moreover, even if these properties had the same classification, they would not be similar for an equity comparison as they are significantly different in size, grade, and aesthetic appeal.

The second property, 1106 21st Street, is located next door to Harvey's property and is classified residential like the subject. This property is similar to Harvey's in year built, condition, size, and amenities. Its 2013 assessment is \$62,200. Harvey did not provide the fair market value of this property to determine an assessment/sales price ratio, which typically compares prior year sale prices (2012) to the current year's assessment (2013). While this property sold in 2010 for \$37,000, the sale was the result of foreclosure, which is an abnormal sale for assessment purposes. § 441.21(1)(b) ("In arriving at market value, sales prices of property in abnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the effect of factors which distort market value, including but not limited to . . . foreclosure or other forced sales.").

Harvey did not make any specific assertion that the assessor applied an assessing method in a non-uniform manner to similarly situated or comparable properties.

Conclusion of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct.

§ 441.37A(3)(a). However, the *taxpayer* has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

First, we note it appears Harvey believes Chapter 17A requires the Board of Review, and/or Assessor's Office, to support the increased assessment with substantial evidence. It seems that Harvey is attempting to apply a provision for judicial review of a final agency action to place the burden on the Board of Review in his assessment protest. However, as previously noted, in an assessment protest the taxpayer filing the protest bears the burden to show what the correct assessment should be.

§ 441.21(3). Only if the taxpayer presents competent testimony from two disinterested witnesses showing what the property's value should be does the burden shift to the Board of Review. *Id.*

Second, Harvey's only enumerated claim under section 441.37 is that the property's assessment is not equitable. To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 257 Iowa 575, 133 N.W.2d 709 (Iowa 1965). The six criteria include evidence showing

“(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination.”

Id. at 711. The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id.* The *Maxwell* test may have limited applicability now that current Iowa law requires assessments to be at one hundred percent of market value. § 441.21(1). Nevertheless, in some rare instances, the test may be satisfied.

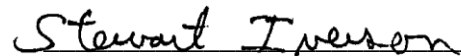
As previously stated an equity analysis typically compares prior year sale prices (2012) or established market values to the current year's assessment (2013) to determine the assessment/sales price ratio. Here, Harvey offered two properties, but one was classified commercial and, therefore, not reasonably similar to Harvey's property. The second property was classified residential like the subject; however it had not sold recently, and Harvey did not offer any reliable evidence of its fair market value. Thus, an assessment/sales ratio analysis could not be developed. Moreover, the *Maxwell* test requires more than one comparable property to establish inequity. We also note Harvey did not establish the market value of the subject property for comparison. For these reasons, we find he has failed to prove inequity under either legal test.

THE APPEAL BOARD ORDERS the 2013 assessment of John Harvey's property located at 1102 21st Street, Des Moines, Iowa, as set by the Polk County Board of Review is affirmed.

Dated this 24th day of April, 2014.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair

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